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| 10/789,665 | 02/27/2004 | Matthew J. N. C. Roche | FORT-002-002 | 7553 |

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| EXAMINER |
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PHAM, HUNG Q

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2168

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10/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/789,665 | Applicant(s) ROCHE ET AL. | |
| | Examiner HUNG Q. PHAM | Art Unit 2168 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-9, 11, 20, 21, 23, 24 and 26-33.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

H. Q. Pham

HUNG Q PHAM
Primary Examiner
Art Unit: 2168

(Continuation of 11)

Claim Rejections - 35 USC § 101

The rejection of claims 8, 9, 11 and 26-30 under 35 U.S.C. § 101 has been withdrawn in view of the amendment.

Claim Rejections - 35 USC § 102

Applicant's arguments with respect to the rejection of claim 1 under 35 U.S.C. § 102 have been fully considered but they are not persuasive.

- As argued by applicant at pages 11 and 12:

Stated in terms of claim 1 of the present application: a merchandising product database at a first network location is populated by obtaining merchandising data from at least one user interaction with the data at a point of presentation at a second network location, where the data is obtained from a server at a third network location. In these terms, however, Musgrove discloses populating a shopping server with product data (obtained by automated processes and without user interaction, col. 5, lines 20-21), then user interaction between only the user and the shopping server. That is, there is no "obtaining step comprising acquiring selected product information from at least one user interaction at a second network location with a presentation medium obtained from a server at a third network location" (claim 1, lines 4-6). Again, this is the very interaction from which Musgrove is trying to free the user.

Thus, the undersigned argues that there are two fundamental limitations in claim 1 (as well as claims 8, 20 and claims depending therefrom) not found in Musgrove:

- (1) there is no "obtaining step comprising acquiring selected product information from at least one user interaction at a second network location with a presentation medium obtained from a server at a third network location" (claim 1, lines 4-6); and
- (2) populating a merchandising database with "selected product information from at least one user interaction" (claim 1, lines 4-5)

The examiner respectfully disagrees.

As recited in the claims, especially claim 1, *merchandising data related to a product is obtained from a point of presentation of the product*. Claim 1 further recites *at least part of the obtained merchandising data is then stored in the merchandising product database at the first network location*. As recited in claim 1, *user interaction* relates to *selected product information*, not the *merchandising data* as argued by the applicant.

Therefore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a merchandising product database at a first network location is populated by obtaining merchandising data from at least one user interaction with the data at a point of presentation at a second network location) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As disclosed by Musgrove, product and shopper database is stored in a memory (Col. 5 Lines 8-10). Merchant servers establish web site for selling products or services (Col. 2 Lines 29-42). Product database 26 can include product descriptions, pricing, deliver dates and other product information are culled from merchant servers 40 using automated web crawlers (Col. 5 Lines 18-22). Product information can be searched and displayed by product type, part numbers, price... using an interface and presented to the shopper by browser application on client computer (Col. 5 Lines 28-32). The shopper then selects one or more products for purchase from one or more merchant servers 40 (Col. 6 Lines 51-53). When a user selects a product for purchase (Col. 5 Lines 53-57), a transaction record is created with transaction information including credit card information, billing addresses, merchant SKU or selected products, shipping options (Col. 6 Lines 67-Col. 7 Lines 6) and stored in shopper database (Col. 7 Lines 42-47 and 60-64). The Musgrove teaching as discussed indicates the claimed limitation, *obtaining merchandising data related to a product from a point of presentation of the product*, e.g., by using web crawler, product descriptions, pricing, deliver dates as *merchandising data related to a product* are obtained from the merchant server website as *a point of presentation of the product*. The obtaining step comprising *acquiring selected product information from at least one user interaction at a second network location with a presentation medium obtained from a server at a third network location*, e.g., credit card information, billing addresses, merchant SKU from a user selection of product for purchasing as *selected product information from at least one user interaction* at the client as *a second network location* is acquired from the web page of merchant server as *a presentation medium obtained from a server at a third network location* to create transaction record. The transaction record including credit card information, billing addresses, merchant SKU from a user selection of product for purchasing is stored in product and shopper database indicates the step of *collecting the selected product information in the merchandising product database*.

- As argued by applicant at page 13:

Similarly with regard to claim 26 (and claims depending therefrom), at least a portion of an interactive catalog is obtained from a third network location and rendered in response to user interaction therewith at a second network location such that selected data from the rendered portion is communicated to a first network location "by way of the second network location" (claim 26, lines 7-9). As discussed, the limitations "rendering in response to user interaction...a description of one or more products" (claim 26, lines 3-4, emphasis added) and "wherein content of the rendered portion includes a description of one or more products and wherein the content is obtained from one or more source product databases at a third network location" (claim 26, lines 4-6, emphasis added) are not found in Musgrove. Therefore, applicant asserts that Musgrove fails to teach each element of claim 26, and claims depending therefrom, and again pursuant to Verdegaal Bros., supra, that reference fails to render those claims unpatentable under 35 U.S.C. 102(e).

The examiner respectfully disagrees.

As shown in FIG. 1 of Musgrove reference, commerce system includes shopping server 20 as *first network location*, client computer 12 as *second network location* and merchant server 40 as *third network location*. As taught by Musgrove, product information such as product descriptions, pricing, delivery dates from plural merchants are gathered (Musgrove, Col. 5 Lines 18-22). Product information can be searched and displayed by product type, part numbers, price... using an interface and presented to the shopper by browser application on client computer (Musgrove, Col. 5 Lines 28-32). As suggested by Musgrove, the shopping interface of SMARTSHOP.COM can be used in connection with Musgrove technique (Col. 5 Lines 41-43). When the user at client computer 12 accesses an interactive catalog, e.g., SMARTSHOP.COM (SMARTSHOP.COM, Page 1), and *in response user interaction with an interactive catalog*, e.g., selecting Dot Matrix Printers (SMARTSHOP.COM, Page 3), *at least a portion of the interactive catalog is rendered at a second network location*, e.g., Pages 5-7 of SMARTSHOP.COM is rendered via the browser of client computer 12, *wherein content of the rendered portion includes a description of one or more products*, e.g., product descriptions are rendered as in Pages 5-7 of SMARTSHOP.COM, *wherein the content is obtained from one or more source product database at a third network location*, e.g., product descriptions are obtained from the databases of merchants servers.

In light of the foregoing arguments, the rejection under the 35 U.S.C. § 102 is hereby sustained.